

## **REMARKS**

Applicants submit the following amendments and remarks. Favorable consideration and allowance of the claims are requested. Applicants have amended claims 1, 5, 8, 11, 14 and 20. Accordingly claims 1-25 remain pending in the application.

### **I. Claims Rejected Under 35 U.S.C. §103**

Claims 20 and 24 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2003/0050015 filed by Kelly et al. (hereinafter Kelly) in view of U.S. Patent Publication No. 2003/0035649 filed by Chung et al. (hereinafter Chung).

As an initial matter, although the Examiner has based the rejection of claims 20 and 24 on § 102(e), Applicants believe this is in error. Therefore, for purposes of responding to the rejection, Applicant will treat the rejection as under § 103 obviousness as evidenced by page 2 of the Office Action.

Claim 20, as amended, recites the elements of “key information in a stuffing bytes portion of the PES packet that is separate from and associated with the header for use in decryption” (emphasis added). Support for the amendments may be found, for example, in paragraph [0013] and Fig. 7 of the Specification. The cited art fails to teach or suggest these elements. Instead, Kelly discloses a packet format where encryption information is stored within a specified “DES Key Field” rather than “in a stuffing bytes portion of the PES packet,” as recited in amended claim 20. See Kelly, paragraph [0094], lines 14-20. Further, Chung fails to cure these deficiencies. Chung, in particular, discloses processing an MPEP transport stream to separate it into a video packetized element stream (PES) and an audio PES, but fails to teach or suggest elements related to “key information in a stuffing bytes portion of the PES packet,” as recited in amended claim 1. See Chung, paragraph [0048]. Consequently, the cited art fails to teach or suggest each element in amended claim 20. In addition, dependent claim 24 is patentable over the cited art because this claim depends on amended claim 20. Accordingly, reconsideration and withdrawal of the rejection of claims 20 and 24 are respectfully requested.

Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. 5,878,135 issued to Blatter et al. (hereinafter Blatter) in view of Kelly further in view of Chung.

Claim 1, as amended, recites the elements of “placing non-compliant data in a stuffing bytes portion of the PES packet that is separate from the synchronization point and a payload in the PES packet” (emphasis added). These cited elements are analogous to those discussed above in connection with amended claim 20. The cited art fails to teach or suggest these elements as discussed below.

In contrast, Blatter discloses a system wherein broadcast encryption codes are inserted within MPEG compatible adaptation fields of a packet header. See Blatter, column 10, lines 19-31. The encryption codes in the MPEG compatible adaptation fields of Blatter are not equivalent to the elements of “non-compliant data in a stuffing bytes portion of the PES packet,” (emphasis added) as recited in amended claim 1. Thus, Blatter fails to teach or suggest each element of amended claim 1 for at least these reasons. Further, Kelly and Chung fail to teach or suggest these cited elements for at least the reasons discussed in connection with amended claim 20 above because amended claim 1 recites analogous elements to those in claim 20. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1.

In regard to claims 5, 8, 11 and 14, these claims have been amended to recite analogous limitations to those discussed above in amended claim 1. Therefore, for at least the reasons discussed above pertaining to claim 1, the limitations of amended claims 5, 8, 11 and 14 are not disclosed by the cited art. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 5, 8, 11 and 14.

Claims 2-4, 6, 7, 9, 10, 12, 13 and 15-19 depend from independent claims 1, 5, 8, 11 or 14, and incorporate the limitations thereof. Thus, at least for the reasons discussed above in regard to independent claims 1, 5, 8, 11 and 14, Blatter in view of Kelly in further view of Chung fails to teach or suggest each element of these dependent claims. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 2-4, 6, 7, 9, 10, 12, 13 and 15-19.

Claims 21-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kelly in view of Chung and further in view of Blatter.

Claims 21-23 depend from independent claim 20, and incorporate the limitations thereof. Thus, at least for the reasons discussed above in regard to amended claim 20, Kelly in view of Chung fails to teach or suggest each element of these dependent claims. Further, as discussed above, amended claim 20 recites analogous elements to those in amended claim 1. Therefore, Blatter fails to teach or suggest the missing elements of claim 20 for at least the reasons discussed above in connection with amended claim 1 as well. Thus, the cited art fails to teach or suggest each element of dependent claims 21-23 because each of these claims depends on base claim 20. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 21-23.

Claim 25 is rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. 7,383,435 B2 issued to Fellerer (hereinafter Fellerer) in view of *In re Japikse*, 86 USPQ 70 and *Nerwin v. Erlichman*, 168 USPQ 177.

Claim 25, among other limitations recites, the elements of “the data structure consisting of: a header, key information . . . , and a payload.” As discussed at length in the previously filed response, the phrase “consisting of” limits the data structure to only the listed elements. See MPEP 2111.03. Applicants submit that the Examiner is continuing to not properly interpret the phrase “consisting of” as required under MPEP 2111.03. In particular, Fig. 2 of Fellerer includes an extra field in the RTP payload corresponding to the length of the payload (see e.g., element 34 in Fig. 2). Because of this inclusion of the additional payload length field in the packet, Fellerer clearly fails to teach or suggest the elements of “consisting of: a header, key information . . . , and a payload,” as recited in claim 25. As a result, Fellerer fails to teach or suggest these cited elements in claim 25 that exclude elements not specified in claim 25.

Further, in response to the Examiner's statement that separating the key information from the payload as recited in claim 25 is a matter of design choice based on *In re Japikse* and *Nerwin v. Erlichman*, Applicants respectfully submit that MPEP 2144.04(VI)(C) states the following:

However, "The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the reference device."

See also *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).

Here, the Examiner has failed to cite a portion of *Fellerer* that provides a motivation or reason for a skilled artisan to make the modification as proposed by the Examiner. Instead, the Examiner has provided none other than making a conclusory statement that appears to rely on Applicants' disclosure (i.e., hindsight bias) and based on citations to two cases unrelated to *Fellerer*. Consequently, Applicants traverse the Examiner's assertion that separating the key information from the payload as recited in claim 25 is a matter of design choice because the Examiner has failed to provide support based on the teachings of *Fellerer*. Therefore, for at least these reasons, the Examiner has failed to properly establish a *prima facie* case of obviousness that comports with the requirements under MPEP 2144.04(VI)(C).

Thus, in view of at least the reasons set forth above, Applicants submit that the cited art fails to teach or suggest each element in claim 25. Accordingly, reconsideration and withdrawal of the rejection of claim 25 are respectfully requested.

**CONCLUSION**

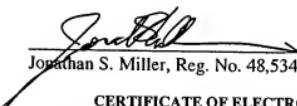
In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

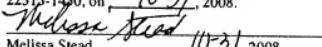
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Melissa Stead 10/31, 2008